IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Case No. **R.S.A No. 880 of 1982**

Date of decision : _____

Jarnail Singh ... Appellant

Versus

Gurmail Singh and another ... Respondents

Present: Mr. G.S.Punia, Advocate
for the appellant.

Mr.S.K.Singla, Advocate
for the respondents.

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RANJIT SINGH, J

Suit challenging the sale deeds dated 12.5.1978 and 24.5.1978 allegedly executed by the plaintiff was filed by the appellant-plaintiff on the ground that sale was without consideration. This suit of the appellant-plaintiff was dismissed. He failed in first appeal and, as such, has filed this present regular second appeal.

Briefly stated, the suit was filed stating that the appellant-plaintiff was the owner of land measuring 37 Kanals 3 Marlas situated in village Sohana Tehsil Kharar District Ropar. Pleading that the plaintiff being immature, ignorant and illiterate person, had been tricked by the respondent-defendants who were shrewd and clever persons in getting the impugned sale deeds executed from him. Giving details in this regard, it was averred in the suit that the respondent-defendant had developed intimacy with the appellant-plaintiff. They offered him liquor and other intoxicants adversely affecting his mental faculties and, thus, they

got the sale deeds executed. It was conceded that the respondent-defendants used to provide funds for the purchase of liquor and other intoxicants. For fulfilling his desire, the appellant-plaintiff became dependent on the respondent-defendants and was on their mercy. It was pleaded that the respondent-defendants got certain documents thumb marked from the appellant-plaintiff that these were needed for better management of the property. These documents were subsequently got registered as sale deeds. It is claimed by the appellant-plaintiff that the contents of these documents were never read over to him. As per him, when eight months prior to the institution of the present suit, he came out of the effect of drugs and intoxicants, he developed suspicion about the designs of the respondent-defendant. On his inquiry, he learnt that instead of executing Power of Attorney etc. for management of land as told to him, the respondent-defendants had fraudulently got the sale deeds executed from the appellant, as referred to above. They had accordingly got this land transferred in their names subsequently on the basis of these sale deeds. Alleging that the appellant-plaintiff never executed the sale deeds of his free will and consent and that there was no necessity for him to do so, he had filed this suit.

In the reply, the pleas taken by the appellant were controverted. It was stated that the properties in dispute in the suit were sold by the appellant through two registered sale deeds for considerations of Rs.30,000/- and Rs.49,000/- respectively. It was further stated that the sale deeds were executed after receipt of the entire payment and on account of free will of the appellant-plaintiff. The appellant-plaintiff had also appeared before the Sub-Registrar where payments were made and thereafter he had appended his signatures on these sale deeds. The allegations, that the appellant-plaintiff was under the influence of intoxicants at the time of signing the sale deeds or that he was mentally of unsound mind, were denied.

Having regard to the pleadings, both the parties led their respective

evidence. The issue regarding execution of sale deed due to misrepresentation and being without consideration, was framed. Trial Court, after discussing the respective evidences, found that the appellant-plaintiff had utterly failed to prove the assertion made in his plaint that he was incapacitated due to the influence of liquor etc. at the time of executing the sale deeds. It was further found that he was perfectly of sound mind and was present at the time of execution of sale deeds, where he had received a sum of Rs.5,000/- in cash as balance money of the sale consideration. Trial Court also found that it was not reasonable to assume that the appellant would have remained incapacitated for such a long period so as to enable the respondent-defendant to get these sale deeds executed in the manner he had pleaded. As per the findings, no record or material was led in evidence to show that the appellant had remained admitted in a hospital for his treatment which could indicate that he was having infirm state of mind. Holding that there was an initial presumption of truth of a registered document, it was observed that it did not lye in the mouth of the appellant now to urge that the alleged sale deeds were got registered from him by misrepresentation. His suit was accordingly dismissed.

It was argued before the first Appellate Court that consideration of sale deeds in this case was inadequate, which would itself show that the sales were not genuine. The first Appellate Court, however, after analysis of the rates of the prevailing value of the land, found that the sale considerations in both the sales were more or less as per prevailing average price of the land sold during the relevant period. The first Appellate Court also noticed that if the plea of the appellant-plaintiff for having got the sale deeds executed from him by inducing him on 12.5.1978 was correct, then he was bound to be more cautious and could not be expected to execute the second sale deed on 24.5.1978. Accordingly, the appeal filed by the appellant was dismissed on 16.9.1981.

Mr. G.S.Punia, Advocate has now put in appearance on behalf of the

appellant and he has raised only one ground to challenge the judgment of the trial Court as well as the first Appellate Court. He has contended that the first Appellate Court has found, as a matter of fact, that there was no evidence by the respondent showing that a sum of Rs.18,500/- had actually been paid to the appellant. He has, accordingly, attacked the finding of the first Appellate Court wherein it was held that under Section 54 of the Transfer of Property Act, sale was complete as soon as there was a transfer of ownership irrespective of the fact whether the price had or had not been paid. Counsel would submit that this finding of the trial Court is not sustainable and in support of this submission, he has relied upon the decision of the Supreme Court of India in the case of **Balbir Singh** versus **Gurcharan Kaur and others,** 1995 (3) R.R.R. 209 and decision of this Court in the case of **Smt. Ind Kaur** versus **Tara Singh,** 1978 R.L.R 110.

Mr. S.K.Singla, learned counsel appearing for the respondent-dependent has prayed that no interference is called for in the finding returned by the trial Court as well as by the first Appellate Court on any of the grounds, as pleaded in the second appeal.

In **Balbir Singh's** case (supra), there was a peculiar clause in the deed of sale to the effect that if sale consideration was not paid on or before a particular date, the document was to be deemed to have been cancelled. In this view of the matter, it was said that it will not fall within the provisions of Section 54 of the Transfer of Property Act. In the background of this factual position, the Hon'ble Supreme Court held that this will not constitute a promise to pay sale consideration in future. Such is not the situation in the present case. The facts in the case of **Ind Kaur's** case (supra) were also different. No doubt, in this case it was held that it would not follow as a matter of course that even if the transferee deceives a transferor and leads him to execute the document on the basis of false statement, the document should be held to constitute a valid transfer of the title of property to the transferee who is himself a wrong doer. In this case, consideration

had been paid by way of a cheque and some payment made earlier. In this view of the matter, it was found in this case that the intention of the parties that the title to the property should not pass till the consideration of money represented to be paid under the cheque was in fact paid. Even otherwise, I find that the observation of the first Appellate Court in regard to non-payment of Rs.18,000/- has been made just in the passing. The oral evidence in regard to payment of this amount was led by the respondents. Dalip Singh, DW-2 and Gurmail Singh,DW-1 clearly stated that the sale deeds were executed after the receipt of due consideration. Sarja Singh, DW-3, who scribed the sale deeds and the witnesses to the sale deeds, gave evidence that this was read over to the appellant-plaintiff and he had then thumb marked the same in token of its correctness. A sum of Rs.5,000/- was paid before the Sub-Registrar when sale deed, Ex. P-1 was executed. A sum of Rs.18,500/-had earlier been paid as earnest money. If the full amount of consideration had not been paid, the appellant was bound to complain and raise the same before the Sub-Registrar when only a sum of Rs.5,000/- was paid. It is not the case of the appellant-plaintiff that he was made part payment of the amount before the Sub-Registrar. His case is that he was not paid any consideration whatsoever. This will also stand negated from the fact that land was previously mortgaged and a sum of Rs.6,500/- was kept apart for re-deeming the said mortgage. It has also come in evidence that after settling the account, it was found that only a sum of Rs.4,875/- was due to the previous mortgagees and, as such, the remaining amount of Rs.1,625/- was paid to the appellant-plaintiff for which he gave a receipt, mark 'A'. So far as the second sale deed is concerned, a sum of Rs.500/- is stated to have been paid in the presence of the Sub-Registrar. The remaining sum of Rs.44,000/- was again kept for being paid to the previous mortgagee of the land. The fact that the land, which is the subject matter of the sale deed, was under mortgage has not been dispute. Record also does not show if there was any dispute in regard to amounts which were required to be paid to the previous mortgagees. The land has

since been redeemed which could have been done only after paying the amount due to the previous mortgagee. In this view of the matter, it cannot be held that these sale deeds were got executed without passing of sale consideration. The observation that evidence in regard to payment of the amount, made by the first Appellate Court and which has been highlighted by counsel for the appellant, as such, does not seem to be flowing from the evidence on record. I accordingly do not find any infirmity in the impugned judgments. There is no merit in the pleas raised by counsel for the appellant and accordingly the present appeal is dismissed.

Counsel for the respondent has brought to my notice that this land has since been acquired. The compensation paid for the land stands deposited in some Court and has not been disbursed because of the pendency of the present appeal. Respondents would be at liberty to seek the release of the same on the basis of the decision in the present appeal which would be subject, of course, to any other proceedings pending, if any.

Parties are left to bear their own costs.

(RANJIT SINGH)
JUDGE

September , 2006

RS